IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1325 of 1999

in

SPECIAL CIVIL APPLICATION No 6468 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

ANWARBHAI ALLARAKHA MOGAL

Versus

GUJARAT STATE FINANCIAL CORPORATION

Appearance:

MR CL SONI for Appellant

MR KM PATEL for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE D.H.WAGHELA

Date of decision: 12/01/2000

ORAL JUDGEMENT (Per B.C.Patel, J.)

We have heard learned advocate Mr.Soni. When he was reading page 20 wherein it is stated that the applicant has worked continuously for one year, which fact has been admitted by the employer, the learned advocate appearing for the respondent, stated that Mr.Soni is not reading the complete sentence. According to the learned advocate for the employer, it was not a continuous service. In the next sentence it is mentioned that service has been rendered as per different orders and it was not continuous. When the learned advocate for the respondent was asked not to interfere when the learned advocate is making his submissions, more particularly when the court has permitted him to make submissions, Mr.Soni submitted that the Court may decide the matter if he is not permitted to argue. In fact, after some discussions, learned advocate Mr.Soni requested the Court to permit him to argue in his own way and we permitted him to do so. Despite this, he has stated that if the Court has decided to pass order, it is of no use to argue the matter.

2. We have gone through the order passed by the learned single Judge. The learned advocate initially submitted that against the order passed by the Tribunal, the employer has filed a writ petition in this court which has been admitted and therefore this Court should allow this appeal by directing the office to place the Special Civil Application along with the Special Civil Application which has been filed by the employer. In our view, that submission is not justifiable.

3. The learned advocate submitted that the applicant has continuously served. For that purpose, he read page 15 where different dates are indicated. On the same page, the Tribunal has pointed out as under:

> "Thus, the applicant has worked in July 1987, August 1987, September 1987, October 1987, December 1987 and January 1988, which fact has been admitted by both the parties".

If this is the position, we fail to understand as to how there can be any challenge to this finding which is recorded by the learned Judge of the Labour Court. If there was any mistake, it was for him at the earliest opportunity to make an application pointing it out to the Presiding Officer of the Labour Court. When both the

parties have admitted the position, we find no merits in the submissions made by the learned advocate. From the contentions it appears that the applicant was employed for a temporary period and by different orders he was appointed from time to time. It is pointed out that the work was given on account of a stop-gap-arrangement on purely temporary basis. The Government of Gujarat has directed that persons in the payscale of Rs.800/- and above can be appointed only by inviting applications through employment exchange. It is in view of this, it appears that the employer requested the Rajkot Employment Exchange for sending names of persons fit for discharging duties. It is till the list was made available that arrangement was made. It is also clear that in the month of November 1987, the applicant has not worked and that fact is not in dispute. In view of different orders, it appears that the appointment was purely on temporary basis.

4. The question is that whether this Court should interfere with the order passed by the learned Single Judge? When the Labour Court while exercising its powers under the Industrial Disputes Act has exercised its discretion taking into consideration all these aspects and has said that the workman be taken back in service without backwages, in our opinion, it calls for no interference. We make it clear that our finding is only for this appeal and that will not bind the party in separate proceedings which are initiated by the employer. Appeal is dismissed. Notice is discharged with no order as to costs.

(KMG Thilake)

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